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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

PP Docket No. 93-253

To: The Commission

PETITION FOR RECONSIDERATION

THE NATIONAL ASSOCIATION OF BLACK
OWNED BROADCASTERS, INC.

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August 15, 1994

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The National Association of Black Owned Broadcasters, Inc., ("NABOB"), by its attorneys, hereby submits its Petition for Reconsideration in the above-captioned proceeding. NABOB submits this Petition for Reconsideration to address two matters which should be reconsidered in this proceeding: (1) the definition of "minority owned small business" and (2) the bidding credit which should be accorded to minority owned small businesses.

I. THE COMMISSION SHOULD AMEND THE DEFINITION OF MINORITY OWNED SMALL BUSINESS

In the Fifth Report and Order, in this proceeding, FCC 94-178, released July 15, 1994, the Commission adopted rules defining "minority owned small businesses." The rules were designed to ensure that the policies adopted in that order to benefit minority owned small businesses would be used by companies actually controlled by minorities, and not by minorities serving as fronts or shams controlled by companies not entitled to such benefits. NABOB fully supports the intent of these rules. However, NABOB submits that the rules are unnecessarily restrictive in defining

minority owned small businesses, and that the Commission's desire to ensure that such companies do not serve as fronts or shams can be accomplished with less restrictive definitions.

As the Commission is well aware, broadband PCS will be an extremely capital intensive business. In addition, it will be a very competitive business. Each PCS licensee will compete with two entrenched cellular telephone providers as well as the other five PCS providers.

Given this reality, minority entrants into this business will need to demonstrate to financing sources that they have the resources, experience, personnel and facilities necessary to successfully construct and operate a PCS business in a very short period of time. For most minority owned companies, this will necessitate bringing an established major telecommunications company partner into the ownership of the minority owned company. In order to attract major telecommunications companies to invest in companies controlled by minorities, minority owned small businesses will need to demonstrate that they include operators experienced in running companies of substantial size. This may require that a minority owned small business include in its ownership and management team, minority individuals or minority owned companies which may not fall under the Commission's \$40 million cap on small businesses. This is an important consideration for which the Commission's rules do not account.

If a minority owned small business is to attract hundreds of millions of dollars in capital for bidding upon and building

broadband PCS systems, all parties investing in the applicant, i.e., financing sources, major telecommunications companies or other major corporations, will need to see included in the management team minority individuals with a track record of operating an enterprise of substantial size. Indeed, allowing minority owned small businesses to include experienced larger minority owned companies in their ownership and management is an excellent means of assuring that the minority owned small business is not dominated by a major telecommunications company or other major corporation.

The Commission's rules as adopted in the Fifth Report and Order, place too many restrictions on the ownership of minority owned small businesses to allow this coming together of experienced companies within a small business entity owned and controlled by minorities. To provide the flexibility necessary to allow all of these elements to come together within one entity, the Commission should alter its rules as follows:

1. Para. 115, p, 51.

The Commission should amend the definition of "control group" for "minority owned small businesses." The definition should be amended to allow any minority individual and any minority owned company, which falls within the \$125 million cap for bidding in the entrepreneur block, to qualify as a member of the "control group" of a minority owned applicant, provided that any minority individual or company which exceeds the \$40 million cap should not

be allowed to own or control more than 10% of the applicant's voting stock or equity.

The rationale for this proposed change is that there are very few minority owned large companies in America, and the potential for abuse by these firms is very limited. As the attached copy of the Black Enterprise magazine listing of the 100 largest African American owned industrial and service companies shows, only 34 of the 100 exceed \$40 million in gross revenues. See Exhibit 1 attached. In addition, none of the 100 is in the wireline telephone or cellular telephone business. Of the companies in the top 100 which are in other aspects of the telecommunications business, only 6 of those companies have revenues between \$125 million and \$40 million. Of the companies in the top 100 with gross revenues under \$40 million only 7 are currently in the telecommunications business. Thus, the potential for abuse of the Commission's rules is very limited.

2. Para. 160, p. 71.

The Commission should not aggregate the gross revenues and net worth of minorities in the control group of a minority owned corporation or partnership. A consortium-corporation or consortium-partnership controlled by minorities should be treated no differently than a consortium-joint venture of such entities. The Commission's rules treat a consortium of minority owned entities in a totally disparate manner based merely upon whether the minority owned small businesses come together to form a consortium-corporation or consortium-partnership on the one hand,

or a consortium-joint venture on the other. There is no rational basis for limiting the consortium non-aggregation policy only to joint ventures. The gross revenues and net worth of minority owned companies and individuals should not be aggregated regardless of the business form in which they choose to operate. To do otherwise elevates form over substance and unnecessarily impedes the ability of consortia of small businesses to come together to raise capital and operate PCS systems.

3. Para. 175. pp. 77-78.

As noted above, the Commission should not aggregate the gross revenues and net worth of small businesses owned and controlled by minorities.

4. Para. 179, p. 79.

As stated above, the non-aggregation standard applied to joint ventures of minority owned businesses should apply to all applicants owned by minorities, regardless of whether they are formed as corporations, partnerships, or joint ventures, and should not be limited just to those which choose to do business in the form of a joint venture.

5. Para. 184-188, pp. 81-83.

The Commission should allow a limited partnership, in which the general partner is a corporation 90% controlled by minorities (using the expanded definition of "control group" proposed above) to qualify as a minority owned small business. The Commission's rules for limited partnerships are too restrictive. The Commission's rules provide that, in a limited partnership, all

general partnership interests must be owned by the control group. This would mean that a limited partnership in which the general partner is a corporation 90% owned by minority owned entities would not qualify as a minority owned small business. This could foreclose potential applicants from a widely used form of attracting passive equity capital. If: (1) minorities control 90% of the corporate general partner, (2) those minorities own at least 50.1% of the equity of the applicant limited partnership, and (3) entities which do not qualify to bid in the entrepreneurs block hold no more than 49.9% of the passive equity of the limited partnership and no more than 5% of the corporate general partner, the Commission's concerns with respect to front and sham applications should be alleviated, and such entities should be considered to be minority owned small businesses.

II. BIDDING CREDITS

The Commission should reconsider its decision with respect to bidding credits for minority owned small businesses. In its ex parte comments filed in this proceeding on June 21, 1994, NABOB argued for bidding credits of 50%. In the Fifth Report and Order the Commission adopted a bidding credit of 25% for minority owned small businesses. NABOB submits that this credit will be inadequate to provide minority owned small businesses an opportunity to attract the capital and resources needed to successfully bid in the broadband PCS auctions.

The Commission has conducted two auctions since adoption of the rules for broadband auctions. The results of these auctions

are very instructive. First, in the narrowband auction for national licenses, no designated entities were successful in bidding for licenses. Further, the prices for the spectrum were over ten times the amounts the Commission anticipated.

Second, the Commission has conducted the auction of interactive voice and data ("IVDS") service licenses. There, the two largest bidders, purportedly companies owned by women, have defaulted in paying for their licenses. This suggests that these companies were unable to obtain the financing needed to pay for the high prices they bid.

Given this auction experience, absent very substantial minority ownership policies, the prospects for minorities to acquire licenses in the much more valuable broadband auctions seem very slim. The adoption of at least a 35% bidding credit for minority owned small businesses is necessary to assist minorities in attracting the capital and resources needed to allow them to bid in the broadband auctions.


III. MANAGEMENT AGREEMENTS

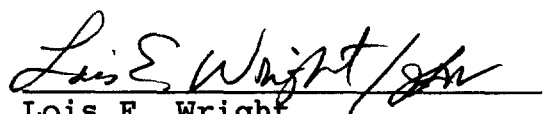
The Commission, in a separate order in this proceeding, has requested comments on the use of management agreements as they relate to designated entities. NABOB will submit separate comments on management agreements in accordance with that order. However, at footnote 135, page 70, of the Fifth Report and Order, the Commission noted that it would permit passive investors to enter into management agreements with applicants. NABOB supports this as a necessary means of allowing minority owned small business

applicants to bring the expertise and resources of established large telecommunications companies under their control. In allowing such management agreements, the Commission should adopt a flexible regulatory structure and should not impose all of the restrictions of the Intermountain Microwave case. NABOB will elaborate on this point in its comments on management agreements.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF BLACK
OWNED BROADCASTERS, INC.**

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August 15, 1994

EXHIBIT 1

100s INDUSTRIAL/ SERVICE COMPANIES

THIS YEAR	LAST YEAR	COMPANY	LOCATION	CHIEF EXECUTIVE	YEAR STARTED	STAFF	TYPE OF BUSINESS	SALES*
1	1	TLC BEATRICE INTERNATIONAL HOLDINGS INC.	New York, New York	Loida N. Lewis Jean S. Fugett Jr.	1987	4,500	International food processor & distributor	1,700.000
2	2	JOHNSON PUBLISHING CO. INC.	Chicago, Illinois	John H. Johnson	1942	2,600	Publishing; broadcasting; TV production; cosmetics; hair care	293.794
3	3	PHILADELPHIA COCA-COLA BOTTLING CO. INC.	Philadelphia, Pennsylvania	J. Bruce Llewellyn	1985	1,000	Soft drinks bottling	290.000
4	4	H.J. RUSSELL & CO.	Atlanta, Georgia	Herman J. Russell	1952	984	Construction development & management; communications	152.400
5	6	RMS TECHNOLOGIES INC.	Marlton, New Jersey	David W. Huggins	1977	1,178	Computer & technical services	115.200
6	5	THE ANDERSON-DUBOSE CO.	Solon, Ohio	Warren Anderson	1991	80	Food distributor	115.000
7	7	GOLD LINE REFINING LTD.	Houston, Texas	Earl Thomas	1990	58	Oil refinery	108.119
8	10	THREADS 4 LIFE (D/B/A CROSS COLOURS)	Commerce, California	Carl Jones	1990	250	Apparel manufacturer	97.000
9	8	SOFT SHEEN PRODUCTS INC.	Chicago, Illinois	Edward G. Gardner	1964	419	Hair care products manufacturer	96.600
10	9	GARDEN STATE CABLE TV	Cherry Hill, New Jersey	J. Bruce Llewellyn	1989	300	Cable TV operator	96.000
11	—	ENVIROTEST SYSTEMS CORP.	Tucson, Arizona	Chester C. Davenport	1990	1,921	Vehicle emissions testing	90.000
12	12	THE BING GROUP	Detroit, Michigan	David Bing	1980	242	Steel processing; metal stamping distribution	83.324
13	11	BARDEN COMMUNICATIONS INC.	Detroit, Michigan	Don H. Barden	1981	350	Communications; real estate development	82.400
14	15	PULSAR DATA SYSTEMS INC.	New Castle, Delaware	William W. Davis Sr.	1982	79	Systems integration; office automation; computer reseller	79.100
15	40	DREW PEARSON COMPANIES	Addison, Texas	Drew Pearson Kenneth Shead	1985	130	Sports licensing & sportswear manufacturing	77.525
16	14	UNIWORLD GROUP INC.	New York, New York	Byron E. Lewis	1969	90	Advertising; public relations; event marketing; TV programming	77.091
17	13	BURRELL COMMUNICATIONS GROUP	Chicago, Illinois	Thomas J. Burrell	1971	120	Advertising; public relations; consumer promotions	74.700
18	17	BLACK ENTERTAINMENT TELEVISION HOLDINGS	Washington, D.C.	Robert Johnson	1980	350	Cable television network; magazine publishing	74.218
19	19	ESSENCE COMMUNICATIONS INC.	New York, New York	Edward Lewis	1969	94	Magazine publishing; TV production; direct-mail catalog	71.146
20	18	MAYS CHEMICAL COMPANY INC.	Indianapolis, Indiana	William G. Mays	1980	86	Industrial chemical distributors	65.000

*In millions of dollars, to nearest thousand. As of Dec. 31, 1993. Prepared by B.E. Research. Reviewed by Mitchell/Titus & Co.

100s INDUSTRIAL/ SERVICE COMPANIES

THIS YEAR	LAST YEAR	COMPANY	LOCATION	CHIEF EXECUTIVE	YEAR STARTED	STAFF	TYPE OF BUSINESS	SALES*
21	16	STOP SHOP AND SAVE	Baltimore, Maryland	Henry T. Baines Edward Hunt	1978	560	Supermarkets	64.020
22	57	AFRICAN DEVELOPMENT PUBLIC INVESTMENT CORP.	Hollywood, California	Dick Griffey	1985	8	African commodities; air charter service & oil trading	57.818
23	26	WESLEY INDUSTRIES INC.	Flint, Michigan	Delbert W. Mullens	1983	395	Industrial coatings & grey iron foundry products	55.557
24	42	TRUMARK INC.	Lansing, Michigan	Carlton L. Guthrie	1985	390	Automotive metal stampings & exhaust products	52.100
25	30	THE MINGO GROUP	New York, New York	Samuel J. Chisholm	1977	40	Advertising; public relations	50.047
26	27	PEPSI COLA OF WASHINGTON, D.C., L.P.	Washington, D.C.	Earl G. Graves	1990	143	Soft drink distributor	49.283
27	22	SURFACE PROTECTION INDUSTRIES	Los Angeles, California	Robert C. Davidson Jr.	1978	200	Paint & specialty coatings manufacturer	48.500
28	20	COMMUNITY FOODS INC. T/A SUPER PRIDE MARKETS	Baltimore, Maryland	Oscar A. Smith Jr.	1970	400	Supermarkets	47.500
29	23	LUSTER PRODUCTS CO.	Chicago, Illinois	Jory Luster	1957	313	Hair care products manufacturer & distributor	46.000
30	29	GRANITE BROADCASTING CORP.	New York, New York	W. Don Cornwell	1988	450	Network TV affiliates	45.167
31	40	CAPSONIC GROUP INC. DIV. OF GABRIEL INC.	Elgin, Illinois	James Liautaud	1968	350	Composite components for auto & computer control systems	43.721
32	31	CREST COMPUTERS & SUPPLIES	Skokie, Illinois	Gale Sayers	1984	60	Computer hardware/software supplier & systems integrator	43.000
33	25	THE MAXIMA CORP.	Lanham, Maryland	Joshua I. Smith	1978	730	Systems engineering; computer facilities management	41.110
34	36	PRO-LINE CORP.	Dallas, Texas	Comer J. Cottrell	1970	236	Hair care products manufacturer & distributor	40.516
35	37	THACKER ENGINEERING INC.	Atlanta, Georgia	Floyd Thacker	1970	126	Construction; construction management; engineering	39.200
36	38	CALHOUN FOOD SUPERMARKET	Montgomery, Alabama	Greg Calhoun	1984	350	Supermarket	37.179
37	34	GRIMES OIL CO. INC.	Boston, Massachusetts	Calvin M. Grimes	1940	20	Petroleum products distributor	37.000
37	65	SYLVEST MANAGEMENT SYSTEMS CORP.	Lanham, Maryland	Gary S. Murray	1987	54	Computer systems & engineering	37.000
39	39	THE GOURMET COMPANIES	Atlanta, Georgia	Nathaniel Goldston III	1975	1,000	Food service; golf facilities management	36.750
40	35	WESTSIDE DISTRIBUTORS	South Gate, California	Edison R. Lara Sr.	1974	115	Beer & snack foods distributor	35.000

*In millions of dollars, to nearest thousand. As of Dec. 31, 1993. Prepared by B.E. Research. Reviewed by Mitchell/Titus & Co.

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41	45	METTERS INDUSTRIES INC.	McLean, Virginia	Samuel Metters	1981	465	Systems engineering; configuration & data mgt.	34.861
42	28	INTEGRATED SYSTEMS ANALYSTS INC.	Arlington, Virginia	C. Michael Gooden	1980	540	Systems engineering; computer systems services repair	34.600
43	32	BEAUCHAMP DISTRIBUTING CO.	Compton, California	Patrick L. Beauchamp	1971	97	Beverage distributor	34.496
44	—	THOMPSON HOSPITALITY L.P.	Reston, Virginia	Warren M. Thompson	1992	1,925	Restaurant & food service	34.250
45	47	ADVANTAGE ENTERPRISES INC.	Toledo, Ohio	Levi Cook Jr.	1980	357	Project integrator for health care & construction	32.595
46	48	DUDLEY PRODUCTS INC.	Greensboro, North Carolina	Joe Louis Dudley Sr.	1967	505	Beauty products manufacturer	32.500
47	44	AM-PRO PROTECTIVE AGENCY INC.	Columbia, South Carolina	John E. Brown	1982	1,200	Security guard services	31.565
48	50	BROOKS SAUSAGE CO. INC.	Kenosha, Wisconsin	Frank B. Brooks	1985	160	Sausage manufacturer	31.500
49	63	R. O. W. SCIENCES INC.	Rockville, Maryland	Ralph Williams	1983	485	Biomedical & health services; research	31.000
49	33	RUSH COMMUNICATIONS	New York, New York	Russell Simmons	1990	70	Music publishing; TV, film, radio production	31.000
51	—	EDGE SYSTEMS INC.	Aurora, Illinois	Sam Bishop	1985	60	Computer systems integration; turn- key computer systems for imaging	30.081
52	51	INNER CITY BROADCASTING CORP.	New York, New York	Pierre Sutton	1972	205	Radio, TV, cable TV franchise	29.000
52	51	YANCY MINERALS	Woodbridge, Connecticut	Earl J. Yancy	1977	12	Industrial metals, minerals & coal distributors	29.000
54	—	DIGITAL SYSTEMS RESEARCH INC.	Arlington, Virginia	Willie Woods	1988	262	Defense systems; engineering; computer systems integration	28.978
55	48	AUTOMATED SCIENCES GROUP INC.	Silver Spring, Maryland	Arthur Holmes Jr.	1974	300	Information and sensor technologies manufacturer	28.000
56	54	QUEEN CITY BROADCASTING INC.	New York, New York	J. Bruce Llewellyn	1985	130	Network TV affiliates	27.800
57	53	CIMARRON EXPRESS INC.	Genoa, Ohio	Glenn G. Grady	1984	85	Contract carrier	26.500
57	62	DICK GRIFFEY PRODUCTIONS	Hollywood, California	Dick Griffey	1975	102	Entertainment	26.500
59	55	INTEGRATED STEEL INC.	Detroit, Michigan	Geralda L. Dodd	1990	235	Automotive stamping & steel sales & processing	26.000
59	—	O. J. TRANSPORT CO.	Detroit, Michigan	John A. James	1971	225	Transportation service	26.000

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59	55	PREMIUM DISTRIBUTORS INC. OF WASHINGTON, D.C.	Washington, D.C.	Henry Neloms	1984	75	Beverage distributor	26.000
62	67	SIMMONS ENTERPRISES INC.	Cincinnati, Ohio	Carvel Simmons	1970	80	Trucking; farm operations; day care	25.770
63	58	RESTORATION SUPERMARKET CORP.	Brooklyn, New York	Roderick B. Mitchell	1977	169	Supermarket & drugstore	25.750
64	69	H.F. HENDERSON INDUSTRIES INC.	West Caldwell, New Jersey	Henry F. Henderson Jr.	1954	126	Industrial process controls & defense electronics	25.659
65	—	ADVANCE INC.	Arlington, Virginia	Dennis Brownlee	1980	270	Computer systems integration; telecommunications	25.400
66	43	NETWORK SOLUTIONS INC.	Herndon, Virginia	Emmit J. McHenry	1979	314	Systems integration	24.500
67	59	NAVCOM SYSTEMS INC.	Manassas, Virginia	Elijah "Zeke" Jackson	1986	150	Electronic engineering, design, integration, manufacturing/assembly	23.600
68	66	REGAL PLASTICS CO. INC.	Roseville, Michigan	William F. Pickard	1985	200	Custom plastic injection molding	23.500
69	—	LUNDY ENTERPRISES	New Orleans, Louisiana	Larry Lundy	1992	1,000	Fast-food restaurants	23.300
70	—	V & J FOODS INC.	Milwaukee, Wisconsin	Valerie Daniels-Carter	1984	1,100	Fast-food restaurants	23.000
71	61	PARKS SAUSAGE CO.	Baltimore, Maryland	Raymond Haysbert Sr.	1951	230	Sausage manufacturer	22.886
72	68	EARL G. GRAVES LTD.	New York, New York	Earl G. Graves	1970	65	Magazine publishing	22.434
73	71	D-ORUM HAIRCARE PRODUCTS	Gary, Indiana	Ernest Daurham	1979	130	Minority hair products manufacturer	22.000
74	83	SYSTEMS ENGINEERING & MANAGEMENT ASSOCIATES INC.	Alexandria, Virginia	James C. Smith	1985	274	ADP technical support services	21.500
75	72	BRONNER BROTHERS	Atlanta, Georgia	Bernard Bronner	1947	250	Hair care products manufacturer	21.000
75	73	DUAL INC.	Arlington, Virginia	J. Fred Dual Jr.	1983	300	Engineering & technical services	21.000
77	64	AMERICAN DEVELOPMENT CORP.	N. Charleston, South Carolina	W. Melvin Brown Jr.	1972	218	Manufacturing & sheet metal fabrication	20.000
77	—	DYNAMIC CONCEPTS INC.	Washington, D.C.	Pedro Alfonso	1979	460	Telecommunication support; optical imaging & facilities mgt.	20.000
77	60	LOCKHART & PETTUS INC.	New York, New York	Keith E. Lockhart	1977	20	Advertising agency	20.000
77	70	STEPHENS ENGINEERING CO. INC.	Lanham, Maryland	Wallace O. Stephens	1979	140	Systems integration; facility & computer maintenance	20.000

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